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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Mission of the United Nations in El Salvador

Report of the Secretary-General

I. INTRODUCTION

1. The present report is submitted pursuant to General Assembly resolution 50/7 of 31 October 1995, in which the Assembly approved my proposal to extend the mandate of the Mission of the United Nations in El Salvador (MINUSAL) for a further period of six months and requested that I report back to it on the implementation of the resolution.

2. Since that time MINUSAL has continued to verify the status of implementation of the peace agreements in accordance with the programme of work (S/1995/407, annex) for the completion of all outstanding areas of the peace accords signed on 27 April 1995 by the parties to the Chapultepec Agreement (A/46/864-S/23501, annex). The present report assesses the status of verification during the period from 1 November 1995 to 31 March 1996 as the expiration of the MINUSAL mandate on 30 April 1996 approaches.

3. As the members of the General Assembly will recall, I last submitted a report on MINUSAL activities on 6 October 1995 (A/50/517). Since then I have submitted an informal report to the Security Council (25 January 1996) and, on several occasions, dispatched a high-level envoy from Headquarters to hold meetings with the President, the Frente Farabundo Martí para la Liberación Nacional (FMLN) and other key political actors and to assist the Mission in the discharge of its responsibilities.

4. Besides this introduction and my concluding observations, I have divided the report into six sections: public security; human rights and the judicial system; economic and social issues; electoral matters; technical assistance programmes; and administrative aspects.

II. PUBLIC SECURITY

5. Throughout the mandate of MINUSAL, developments within the public security sector - especially consolidation of the National Civil Police - have held an important place on the agenda of the Government of El Salvador, which has consistently demonstrated a will to implement improvements. Since my October report to the General Assembly, positive developments have included: the appointment of a new Inspector General for the National Civil Police; the drafting of a police career law, in consultation with MINUSAL; the President's decision to appoint a National Council on Public Security; and the dissolution, in late March, of the "analysis unit" operating outside the formal structure of the National Civil Police until that time. Meanwhile, increasing sectors of Salvadoran society are understanding the importance of public security policies in strengthening democracy and the rule of law, and in improving the quality of life.

6. This reality suggests a climate favourable to achieving real progress in this area. Yet public debate and proposed policies have been coloured by a series of factors: a post-war crime wave exacerbated by organized crime; simmering social protest, which periodically disturbs public order and has at times led to violence; inconclusive efforts to professionalize and modernize the National Civil Police; and slow progress in ridding the judiciary of those who do not meet professional and ethical standards and in improving the technical skills of judges and prosecutors. These challenges have all too often been met with hasty responses.

7. Progress has been made with respect to the April 1995 programme of work: there remains just one point with which the Government has informed me it will be unable to comply. However, advances within the work programme have not served, as hoped, to strengthen the National Civil Police and the National Public Security Academy institutionally, as events quickly overtook the priorities established by the parties in April 1995. Given the gravity of the situation, in September 1995 President Calderón Sol requested MINUSAL to conduct a far-reaching evaluation of the public security sector. It is my firm conviction that the proposals contained in this evaluation are pertinent in the current context, and, if implemented, would make a valuable contribution to transforming the National Civil Police into an efficient force and to consolidating the democratic public security model envisioned by the peace accords.

8. I remain concerned by the persistence of some of the most damaging problems identified by MINUSAL. Although I welcome the dissolution of the "analysis unit" mentioned above, there remain personnel who operate outside the legally established structure of the National Civil Police. In addition, high-ranking Salvadoran officials continue to interfere in strictly operational aspects of policing, thereby altering the established chain of command of the National

Civil Police and thus not contributing to the strengthening of that institution. I also view with concern recent setbacks in the consolidation of the Department for the Investigation of Organized Crime; delays in consolidating the Division for Criminal Investigation; and resistance to accepting and implementing the February 1996 evaluation by the National Public Security Academy of the anti-riot squad.

9. The National Civil Police, an outstanding accomplishment of the peace process, was designed to include strong internal mechanisms to monitor professional and ethical standards. However, some three years since its initial deployment, these units are still floundering. The legal framework which defines violations and sanctions has been repeatedly modified and neither uniform criteria nor rigour are evident in the resolution of the most serious breaches of professional and ethical conduct. Despite auspicious beginnings, the Inspector General has shown little capacity to respond creatively to the problems facing the National Civil Police and has not yet forged adequate links with the National Counsel for the Defence of Human Rights. Meanwhile, the police career law was only belatedly submitted to the Legislative Assembly, where it still awaits approval.

10. Expectations were raised by the President's appointment of the National Council on Public Security, following a MINUSAL recommendation. Chaired by the Minister of Public Security, the Council is to provide advice to the President as the country develops an integrated public security policy. The current crisis in this sector has underlined the urgent need for an effective response by the Council to the problems which motivated its creation. The Council could achieve this in the next few months by: clearly defining its mandate and objectives; crafting an independent agenda; and contracting an autonomous team of professional advisers and its own administrative staff. The United Nations will continue to offer full support for the strengthening of the Council.

III. HUMAN RIGHTS AND THE JUDICIAL SYSTEM

11. The office of the National Counsel for the Defence of Human Rights achieved steady consolidation in the last year, a process greatly invigorated by the dynamic leadership of the Counsel herself. The Counsel tackled some of the most problematic human rights concerns in the post-war period and has repeatedly been called upon to use its good offices in the mediation of disputes. In so doing it has earned increasing respect and confidence among Salvadorans. None the less, it has suffered from many of the problems inherent to building a new institution charged with the assumption of substantial responsibility in a short time. Its work has also suffered from the difficulty of some government officials in understanding its lawful role.

12. In my January 1996 informal report to the Security Council, I warmly welcomed steps taken to establish a mechanism for coordinating the response of the National Counsel for the Defence of Human Rights and the National Civil Police when social tensions threaten to escalate into violence. Given the likelihood that the country's ongoing political and economic transformation will give rise to such situations in the future, it is important that the preparatory work of the Ministry of Public Security and the Counsel should be concluded

rapidly, in order that an effective working relationship between these two bodies may be consolidated. It is also advisable that the Counsel include a unit specializing in public security.

13. Finally, I would like to reiterate my concern about the inadequate funding of the National Counsel for the Defence of Human Rights. Its portion of the national budget totalled 0.24 per cent in 1995, a figure that is slated to drop in 1996 to 0.20 per cent. Lacking sufficient human and material resources, the Counsel cannot fulfil its indispensable role in consolidating the rule of law. While I am grateful to the international community for its generous support to the Counsel in the past, and confident that it will continue, it is essential that the Salvadoran Government assume full responsibility for the Counsel's activities as a key institution of the post-war period.

14. The new Supreme Court continues to provide important leadership in judicial reform efforts. Recent decisions by the Court confirm its independence and have established the precedence of international instruments over domestic laws in the country's emerging jurisprudence. The Court has taken concrete steps to address the overcrowding of prisons; professional ethics; delays in the administration of justice; and the nullification of cases for lack of defence attorneys. In its vetting of the country's approximately 500 judges, the Supreme Court has dismissed 17 and suspended a further 8. The slow advance in this area can be explained in part by the duplication of investigative functions between the Court and the National Judiciary Council. It is important that the Government and justice sector officials streamline and expedite the vetting process, as deficient professional and ethical standards in the judiciary remain a stumbling block to progress in the administration of justice and the improvement of public security.

15. The mandate of MINUSAL draws to a close amid signs that El Salvador's steady progress towards the rule of law based on modern jurisprudence could experience setbacks. The ratification of the constitutional reforms and secondary legislation in fulfilment of the binding recommendations of the Commission on the Truth remains in a state of paralysis, in part because of prolonged disagreement over the guarantees of due process and the admissibility of extrajudicial confessions contained within the proposed reforms to article 12 of the Constitution. Approval of the criminal codes has been delayed pending resolution of this point, while the penitentiary law and the repeal of the 1886 police law also languish in the Legislative Assembly.

16. Meanwhile, in response to mounting public outcry about the lack of security for the ordinary citizen, the Legislative Assembly recently passed emergency legislation to fight crime. This legislation has been motivated by legitimate concerns over a genuine crisis and contains provision for the protection of witnesses and victims. But the haste with which it was prepared has led to the inclusion of elements that undermine the judicial reform process and could render invalid some aspects of the peace accords already implemented or awaiting implementation, as well as violating rights and guarantees protected by El Salvador's Constitution and international instruments. In particular it is a step backwards in the specific areas of the presumption of innocence, non-retroactivity of criminal law, extrajudicial confessions and the treatment of youthful offenders. Given the expanded powers to detain contained in this

emergency legislation and continuing delays in processing cases, the problems of severe prison overcrowding and large numbers of unsentenced detainees are likely to increase unless urgent corrective action is taken.

17. The Government has also proposed the adoption of a law on social defence. If implemented, this law would also threaten due process by, for example, sanctioning "suspicious persons" and would constitute a measure contrary to the thrust of the legislative reforms mandated by the peace accords. It is to be hoped that the Legislative Assembly will choose other avenues in the fight against crime, especially through the prompt approval of the proposed criminal code, criminal procedure code and penitentiary law, which include new instruments designed to reduce delays in the administration of justice.

IV. ECONOMIC AND SOCIAL ISSUES

18. MINUSAL inherited from the United Nations Observer Mission in El Salvador (ONUSAL) the task of verifying a land transfer programme that had been plagued with difficulties and delays in implementation since its outset. However, since I last reported to the General Assembly in October 1995, greater effort has been made to advance the programme and many of the technical and legal problems that have caused delays in the past have been overcome. The main impediment to the completion of the programme remains the large backlog in the filing of the deeds of properties in the national registry which must complete the transfer. Until this filing is accomplished, a beneficiary cannot be considered the legal owner and is not at liberty to sell the property should he/she so wish.

19. In recent months implementation of the land transfer programme has changed in some important ways. The Lands Bank has been restructured for a third time, with the appointment of a new president entrusted with speeding up completion of the programme. FMLN has been integrated in a cohesive fashion into the proposed strategies for the final phase of the programme and is fully involved in identifying properties to meet outstanding needs. Some progress has also been made in streamlining the payments to owners, contributing to the programme's credibility and serving as an incentive to other owners to sell. Two key decrees (currently Nos. 609 and 610) have provided legal guarantees to owners and landholders as the programme progresses. These legal guarantees have taken on new importance in the light of their extension to participants in the human settlements programme and should be extended until all aspects of the land transfer programme and the human settlements programme are complete.

20. In January 1996, the total universe of potential beneficiaries of the land transfer programme was adjusted downward to 36,551, reflecting the number of participants that have dropped out of the programme. As of 26 March, some 32,210 (or 92.9 per cent) former combatants on both sides of the conflict and FMLN landholders were in receipt of titles, while only 49.6 per cent of issued titles had been recorded in the registry. Meanwhile some 3,000 beneficiaries await titles pending resolution of two complex issues: (a) the shortfall in suitable land available for purchase; and (b) the relocation of those occupying lands whose owners choose not to sell, or those living within a human settlement that is too small for the needs of its occupants.

21. The transfer of the rural human settlements' productive and social infrastructure, as well as housing, to their current occupants remains a sensitive issue that could exacerbate social turmoil in areas hardest hit by the war. Since launching its work in March 1995, the trilateral working group has crafted a global agreement (May 1995) and a special regimen (August 1995) which provide a framework for the programme. The working group also reached agreement on several structural and political guarantees, including legal protection for the duration of the programme for property holders, allowing the operational phase of the programme to begin in March 1996, overseen by the Secretariat of National Reconstruction. Barring unforeseen problems, legal work for the transfers is expected to take at least one year, although the Government recently indicated that it anticipated the programme would conclude in December 1996.

22. The communities in the settlements have yet to make key decisions concerning the legal terms for transferring enterprises included in a community's "productive infrastructure". Similarly, agreement must be reached between the communities and the appropriate governmental authorities regarding the transfer of the schools and health clinics included in the inventory of a community's "social infrastructure". It is important that the communities have access to technical assistance during this phase of the process. Negotiations and transfers are likely to be slowed by owners who do not wish to sell or have fixed an inflated asking price. In the last instance, a scheme of expropriation with compensation, as contemplated in the Constitution, may have to be considered in some cases.

23. The quantifiable targets for the reintegration programmes have been largely achieved. However, many of the productive activities deriving from them have fallen short of expectations, in part because of the inadequacy and harshness of the terms of credit and the scarcity of technical assistance, and are not sustainable. The small businesses that were created remain fragile and beneficiaries are increasingly unable to meet payment on their debt. These difficulties extend to the beneficiaries of the land transfer programme. Inability to service their debt excludes beneficiaries from further access to credit necessary for agricultural products and other basic needs.

24. The Fund for the Protection of the War-Wounded and Disabled, which initially experienced serious setbacks, has now shown positive advances, especially with respect to the payment of benefits to those left wounded or handicapped by the war. Although the Government has fulfilled its obligations under the April 1995 programme of work, a potentially destabilizing situation has arisen because of the exclusion of a significant number of family members unable to produce the requisite documentation to receive their benefits. It is to be hoped that the Government will promptly take steps to address the needs of this population and thus contribute towards the reconciliation of Salvadoran society.

V. ELECTORAL MATTERS

25. In May 1994, following the presidential, legislative and local government elections and an agreement between the candidates for the presidential run-off to reform the electoral system, I reported to the Security Council that there was "an evident need for a thorough reform of the electoral system" (see S/1994/536, para. 17). To that end, in November 1994 the President appointed an inter-party Commission, which has since made a series of recommendations calling for: the creation of a national civil register responsible for issuing a single identity and voter card; the reform of the Supreme Electoral Tribunal; the introduction of residential voting; and the introduction of proportional representation in municipal governments.

26. A few encouraging signs have been noted, such as approval by the Legislative Assembly of a bill creating the national civil registry (Registro Nacional de Personas Naturales) and the registry's Organic Law. In addition, in anticipation of the legislation necessary to consolidate its reform, at the start of 1996 the Supreme Electoral Tribunal took the initiative of advancing its own administrative reform. However, concrete progress both in terms of long-term reform and preparation for the 1997 legislative and municipal elections has been insufficient. It is now unlikely that the registry will be in place in time for these elections, while the low budget allocation to the Tribunal in a pre-electoral year (US$ 5.7 million) also appears to have impeded the possibility of cleansing and updating the electoral register as an intermediary measure. With the voter registration period scheduled to conclude in eight months, I urge members of all parties to redouble their efforts to ensure the legitimacy of the 1997 elections.

VI. TECHNICAL ASSISTANCE PROGRAMMES

27. Of great importance to the consolidation of the peace process is provision of appropriate technical assistance. Over the last 15 months, in cooperation with ONUSAL/MINUSAL and other United Nations bodies, the United Nations Development Programme (UNDP) has formulated 21 projects of technical assistance and institutional strengthening. In June 1995, the Government of El Salvador presented a number of these peace accord-related projects to the Consultative Group donor meeting convened by the World Bank and Inter-American Development Bank in Paris. Thirteen projects funded by the international community are currently under way and an additional four will begin in the next few weeks. The Governments of Brazil, Norway, Spain and Sweden are providing advisers and instructors to the National Public Security Academy and the National Civil Police under the auspices of UNDP, while Chile, France and the United States of America are providing assistance separately. I welcome this evidence of continued support for peace-building and development in El Salvador.

28. The efforts of the United Nations in El Salvador have greatly benefited from cooperation between MINUSAL and UNDP. As the Organization's verification of the Salvadoran peace accords enters its final stage, I shall rely on UNDP to provide continuing support to peace-building in El Salvador to conceptualize needs, mobilize and channel the resources of donors and to implement and monitor

projects. I would like to recognize the importance of UNDP's contribution in this regard.

VII. ADMINISTRATIVE ASPECTS

29. At its outset on 1 May 1995, MINUSAL consisted of 11 international staff, 8 civilian police consultants and a small administrative staff and was supported by UNDP in the financial disbursement of allotted funds and other administrative functions. The advances registered since then have allowed the team, which has been led since October by my Representative and Director of Mission Mr. Ricardo Vigil (Peru), to be reduced to eight Professionals and three civilian police consultants, in accordance with the wish expressed by the General Assembly in its resolution 50/7 to see "a gradual reduction of its strength and costs, in a manner compatible with the efficient performance of its functions". I should like to pay tribute to my Representative and his staff for their efforts to further the implementation of the peace accords in El Salvador.

30. Commitment authorization has been provided for MINUSAL in the amount of $2,595,900 for the period from 1 May 1995 to 30 April 1996, of which some 25 per cent has been funded through the Trust Fund for MINUSAL by voluntary contributions from Denmark, Norway and Sweden. I should like to extend my thanks to these three Member States for their generous contributions.

VIII. OBSERVATIONS

31. The public security situation in El Salvador and efforts by the Government to address it continue to raise concern. The recent adoption of emergency legislation designed to fight crime, which represents a substantial departure from the process embodied in the peace accords, contradicts, in some instances, basic human rights and due process standards and may exacerbate the already explosive situation of overcrowding in Salvadoran prisons. In this and other areas, I look to the National Council on Public Security to play a central role in encouraging the consolidation of the new public security system, as it emerges from peace accord-related reforms, in harmony with the solemn commitment made by the signatories at Chapultepec.

32. Recent developments suggest a reversion in the trend towards fulfilment of the recommendations relating to judicial reform and other measures arising from the peace accords aimed at strengthening the rule of law. It is a cause of concern that the Legislative Assembly has not approved the constitutional reforms ratified by its predecessor or any of the legislation mentioned in the work programme. It is to be hoped that pending constitutional reforms as well as the proposed Criminal Code, Criminal Procedure Code and Penitentiary Law will be adopted without further delay. These measures would enshrine what should be a permanent regime in this sphere, to which El Salvador would revert once the emergency legislation, which by its nature should last as short a time as possible, can reasonably be relaxed.

33. The land transfer programme is entering its final and most difficult phase. I call upon all those involved in its execution to exhibit flexibility and

creativity in finding a just solution for beneficiaries affected by the shortfall in suitable land, those occupying plots whose owners do not wish to sell, and those who for other reasons must be relocated. If not addressed forthwith, the slow process of title registration and administrative shortcomings of the registry of deeds will lead to juridical insecurity for beneficiaries of both the land transfer programme and the human settlements programme, and the likelihood of social unrest.

34. It is ever more apparent that once implemented, the programmes designed to ensure the productive reintegration of combatants and others most affected by the war - the land transfer programme, human settlements, and other programmes - will fall far short of ensuring the successful reintegration of this segment of the population. I encourage the Government to bring its full attention to this issue. Also relevant in this context is the prompt elaboration of an agrarian code, as called for by the accords.

35. The above considerations lead me to conclude that, despite the substantial progress made during the year of MINUSAL's presence in El Salvador and the reiterated will of the Government to comply fully with its commitments under the peace agreements, the verification responsibilities assumed by the United Nations in El Salvador will not be completed by 30 April 1996. As this report makes clear, the Organization's further good offices will be, at a minimum, required in: the public security sector; the process of constitutional and legislative reform; the land transfer programme; and the transfer of the rural human settlements.

36. In order to carry out the Organization's responsibility to verify all aspects of the peace accords, a continued presence in El Salvador is required, although not at the same level as that of MINUSAL, for a further period lasting until the end of 1996. I propose that the United Nations replace the Mission with a mechanism that would combine regular visits by a high-level envoy from New York with the retention in the field of a small group of experts whose number would be strictly related to the technical requirements of following up implementation of pending agreements in El Salvador. These experts would continue to work with the Government and other parties to the peace agreements on matters of verification and good offices, support my Envoy in his exercise of verification and good offices and report directly to the Department of Political Affairs in New York. The mechanism would be known as the United Nations Office of Verification (ONUV). In order to further cooperation with UNDP in the technical assistance aspects of implementation, I propose that this Office count on UNDP for logistical and administrative support.

37. While the activities undertaken by this small group of experts with respect to verification and good offices in El Salvador should be primarily funded from assessments, I would anticipate that these could be augmented by voluntary contributions. I would therefore encourage Member States that remain interested in the consolidation of the peace process in El Salvador to come forward with pledges to the Trust Fund for MINUSAL, which will remain active for the new arrangement. I should like to call the attention of Member States to the decisions on the programme budget for the biennium 1996-1997, adopted by the General Assembly in its resolutions 50/215 A-C of 23 December 1995. Accordingly, it would be necessary for the General Assembly to appropriate

additional funds to cover the costs of ONUV for the period of its mandate and for there to be assurances that those funds would be made available in the necessary time-scale. From the above, it follows that, in the absence of additional appropriations, or a commensurate reduction in other mandates, I will not, to my regret, be in a position to carry out activities in El Salvador beyond the end of MINUSAL's current mandate.